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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 10/650,635
Filing Date: August 28, 2003
Appellant(s): MESAROS, GREGORY J.

SEP 19 2007

GROUP 3600

Gregory J. Mesaros
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/2/2007 appealing from the Office action mailed 9/13/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

An Appeal is Pending for US Patent Application No. 10/351,069

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 20020065769 A1	Iribarren	05-2002
US 20030028473	Eso	02-2003
US 20020099643	Abeshouse	07-2002
5,850,442	Muftic	12-1998
US 20020035536	Gellman	03-2002
US 20020065762	Lee	05-2002
20030041002	Hao	02-2003
US 20030055774	Ginsberg	03-2003
US 20030195832	Cao	10-2003
PTO 892 reference W		1996
PTO 892 reference U		January 15, 2001
PTO 892 reference V		February 27, 2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-2, 5-6, 8, 11, 13, 34-37, and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren et al (US 20020065769, herein referred to as Irribarren) in view of Eso et al. (US 20030028473, herein referred to as Eso).**

Regarding claim 1, Irribarren teaches:

a central connection component configured to provide a virtual forum to facilitate electronic communication between buyers and suppliers (see at least: 0055-0056, 0058-0059, Fig. 1);

at least one remote computer connected to the central connection component via a network, wherein at least one buyer employs the at least one computer to request, retrieve, and accept online bids (see at least: abstract, 0049, 0055-0059, 0065, Fig. 6A);

the virtual forum displays in real time current low bids at each tier as the bids are retrieved (see at least: 0068, 0102, 0108, 0122, Fig. 5C, 6C-D, 9E-F (note: quantity, 'current bid' (the lowest bid in a reverse auction) and 'lowest bid'), and 10C).

Irribarren, despite teaching all of the above as well as teaching the submission of bids by suppliers, does not teach where the bids submitted *include a price curve for a product, the price curve specifying a unit price in tiers based on the total volume*. Eso teaches where the bids submitted *include a*

price curve for a product, the price curve specifying a unit price in tiers based on the total volume (see at least: 0006, 0009, 0026, 0030, 0033, Fig. 2A-B and 5). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren to have included where the bids submitted *include a price curve for a product, the price curve specifying a unit price in tiers based on the total volume* as taught by Eso in order to provide quality evaluation of bids according to requirements specified by a requester in complex settings (see at least: Eso, 0005).

Regarding claims 2, 5, and 6, Irribarren in view of Eso teaches:

(2) *wherein the central connection component is a server* (see at least: Irribarren: Fig. 1-2, 0055-0056).

(5) *wherein the virtual forum limits the period during which bids can be accepted* (see at least: Irribarren: 0066, 0069, Fig. 3 (#380), Fig. 6 (# 640)).

(6) *the virtual forum is a web page* (see at least: Irribarren: 0004, 0056, 0061, 0063, Fig. 9A-10I).

Regarding claim 8, Irribarren teaches:

requesting an online bid from at least one supplier (see at least: abstract,);
receiving bids submitted from at least one supplier (see at least: abstract, 0009, 0011, Fig. 3, 6A);
determining a lowest price bid at a respective price point (see at least: 0068, 0070, 0102, 0108, 0111, 0113, 0122, Fig. 5C, 6C-D, 9E-F (note: quantity, 'current bid' (the lowest bid in a reverse auction) and 'lowest bid'), and 10C).

accepting a bid (see at least: abstract, 0009, 0011, Fig. 3, 6A).

Irribarren, despite teaching all of the above as well as teaching the submission of bids by suppliers, does not teach where the bids received *wherein each supplier specifies a price for which it will sell a product at particular price points that vary as a function of total products ordered*. Eso teaches

where the bids *include wherein each supplier specifies a price for which it will sell a product at particular price points that vary as a function of total products ordered* (see at least: 0006, 0009, 0026, 0030, 0033, Fig. 2A-B and 5). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren to have included where the bids *include wherein each supplier specifies a price for which it will sell a product at particular price points that vary as a function of total products ordered* as taught by Eso in order to provide quality evaluation of bids according to requirements specified by a requester in complex settings (see at least: Eso, 0005).

Regarding claims 11 and 13, Irribarren in view of Eso teaches:

(11) *receiving bids during a limited period of time* (see at least: Irribarren: 0066, 0069, Fig. 3 (#380), Fig. 6 (# 640)).

(13) *the buyer specifies a ship date* (see at least: Irribarren: 0007, 0066).

Regarding claims 34-37 and 40-41, Irribarren in view of Eso teaches:

(34) *a bid modification component that updates the price curve associated with a bidding supplier in real time* (see at least: Irribarren, 0068).

(35) *displaying in real time current best bids at each tier* (see at least: 0068, 0102, 0108, 0122, Fig. 5C, 6C-D, 9E-F (note: quantity, 'current bid' (the lowest bid in a reverse auction) and 'lowest bid'), and 10C).

(36) *a best bid is based upon price and another criterion* (see at least: Irribarren: 0067, 0107, 0104; Eso: 0007, 0030, 0033, 0049, Fig. 2, 5).

(37) *a population component that automatically populates the price curve for a product* (see at least: Irribarren: 0067, 0107-0108; Eso: 0006, 0012, 0028-0032, Fig. 2A-2B, 5).

(40) *bidding suppliers are a subset of the plurality of suppliers* (see at least: 0047, 0099, 0103, 0105-0106).

(41) *receiving updated bids from at least one of the bidding supplier* (see at least: Irribarren, 0068).

3. **Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso as applied to claims 1-2, 5-6, 8, and 11, and in further view of Abeshouse et al (US 2002/0099643, herein referred to as Abeshouse).**

Regarding claims 4 and 9, Irribarren in view of Eso teaches all of the above and further teaches *displaying the current lowest price bid at each price point* (see above). Irribarren, however, does not expressly teach *displaying the respective bidding supplier*. Abeshouse teaches display a hierarchy of bids, including the lowest bid, and *the respective bidding suppliers* (see at least: Fig. 6-8, 0089, 0129). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso to have included displaying the *respective bidding suppliers* as taught by Abeshouse in order to provide a method, apparatus and system that beneficially provides bidders with an incentive to actively participate in an auction by submitting additional, progressively lower bids throughout the auction (see at least: Abeshouse, 0033).

4. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso as applied to claims 1-2, 5-6, 8, and 11, and in view of Muftic (US 5,850,442).**

Regarding claim 7, Irribarren in view of Eso teaches all of the above and further teaches providing a virtual forum (see at least: Irribarren, abstract, 0055-0056, Fig. 9A-10I). Irribarren, however, does not expressly teach where the forum is an *Internet chat room*. Muftic teaches providing an auction forum in the form of an *Internet chat room* (see at least: col. 18 lines 11-24, Fig. 23). It would have been

obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso to have included and Internet chat room forum as taught by Muftic in order to provide users with access to an electronic analog of an auction floor (see at least: Muftic, col. 18 lines 11-24).

5. **Claims 10 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso as applied to claims 1-2, 5-6, 8, and 11, and in further view of Gellman (US 2002/0035536).**

Regarding claims 10 and 42, Irribarren in view of Eso teaches accepting bids defining price points/price curves for a bid by a suppliers to achieve the best price/quantity combination (see at least: Irribarren, abstract, 0009, 0011, Fig. 3, 5C, 6A, C, and D). Irribarren in view of Eso also teaches accepting bids by suppliers who have acceptable products as well as receiving bids from acceptable vendors (see at least: Irribarren: 0065, 0080, 0088, 0092). Irribarren in view of Eso, however, does not expressly teach *wherein the bid is accepted based on the lowest price*. Gellman teaches *wherein the bid is accepted based on the lowest price* (see at least: abstract, 0036). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso to have included *accepting bids based on the lowest price* as taught by Gellman in order to provide an reverse auction system that offers a buying channel where marketing and trade promotion of brands, categories, and relationships can be nurtured in direct relationships with consumers and their shopping lists, unmediated by the conflicts and inefficiencies of conventional retail channels. (see at least: Gellman, abstract). The Examiner notes that acceptable vendors/products and price constitute “price and at least one other criterion”.

6. **Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso as applied to claims 1-2, 5-6, 8, and 11, and in further view of Lee et al. (US 2002/0065762, herein referred to as Lee).**

Regarding claim 12, Irribarren in view of Eso teaches all of the above as noted and further teaches RFQs specifying a time period for vendors to respond (see at least: Irribarren: 0066). Irribarren in view of Eso, however, does not expressly teach wherein the time period is specified *by the buyer*. Lee teaches *a buyer specifying a time period* for which an RFQ will be posted to an electronic marketplace (see at least: 0012, 0059). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso to have included *a buyer specifying a time period* as taught by Lee in order to allow a buyer to select or deselect filters in order to compare different sell bids under different conditions (see at least: Lee, 0028).

7. **Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso as applied to claims 1-2, 5-6, 8, and 11, and in further view of Hao et al. (US 2003/0041002, herein referred to as Hao).**

Regarding claim 14, Irribarren in view of Eso teaches all of the above as noted and further teaches submitting prices for a given quantity of business (see at least: Irribarren, 0009) and optimizing the selling terms for buyers (see at least: Irribarren, 0046). Irribarren in view of Eso, however, does not expressly teach *accepting a bid includes accepting a supplier for a fixed length of time*. Hao teaches *wherein accepting a bid includes accepting a supplier for a fixed length of time* (see at least: 0039, 0045). The Examiner notes that a participant bids for a time interval with which the purchaser is bound to. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the

invention of Irribarren in view of Eso to have included *accepting a bid includes accepting a supplier for a fixed length of time* as taught by Hao in order to optimize the computed results of an auction according to a predetermined objective such as total consumer payment (see at least: Hao, 0018, 0035).

8.. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso as applied to claims 1-2, 5-6, 8, 11, and 13, and in further view of Ginsberg (US 2003/0055774).

Regarding claims 15, Irribarren in view of Eso teaches all of the above and further teaches providing aggregated volume at a final determined price (see at least: 0070). However, Irribarren in view of Eso does not expressly teach determining a final price paid at the end of a time period, calculating the average price paid per product, and providing a rebate if the final price paid equal to the final price determined according to the volume of product purchased. Ginsberg teaches *determining a final price paid at the end of a time period, calculating the average price paid per product, and providing a rebate when the final price paid equal to the final price determined according to the volume of product purchased* (see at least: 0017, 0036-0042, claims 1-15). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso to have included determining a final price paid at the end of a time period, calculating the average price paid per product, and providing a rebate if the final price paid equal to the final price determined according to the volume of product purchased as taught by Ginsberg in order to for trading of an item or instrument where excess profits obtained from a sale of an item or instrument at artificially high prices are redistributed to market participants (see at least: Ginsberg, 0006).

Regarding claim 16, Irribarren in view of Eso teaches all of the above and further teaches providing aggregated volume at a final determined price (see at least: 0070). However, Irribarren in view of Eso does not expressly teach *wherein a rebate is provided to the supplier when the average price is lower than the final price determined*. Ginsberg teaches *wherein a rebate is provided to the supplier when the average price is lower than the final price determined* (see at least: 0017, 0036-0042, claims 1-15). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso to have included *wherein a rebate is provided to the supplier if the average price is lower than the final price determined* as taught by Ginsberg in order to provide systems and methods for trading of an item or instrument where excess profits obtained from a sale of an item or instrument at artificially high prices are redistributed to market participants (see at least: Ginsberg, 0006).

9. **Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso and in view of Ginsberg, as applied to claims 1-2, 5-6, 8, 11, 13, and 15-16, and in further view of PTO 892 reference W (herein referred to as 892W).**

Regarding claim 17, Irribarren in view of Eso in view of Ginsberg teaches all of the above and teaches the use of average prices and final paid prices to help determine an amount of rebate from excess profits (see at least: Ginsberg: 0017, 0036-0042, claims 1-15). Irribarren in view of Eso in view of Ginsberg, however, does not expressly teach *wherein a rebate is provided to the buyer when the average price paid is higher than the final price determined*. 892W teaches *wherein a rebate is provided to the buyer when the average price paid is higher than the final price determined* (see at least: Paragraphs, 1-3, and 13). More particularly, 892W teaches a retailer providing a refund (i.e. rebate) to a customer who has overpaid for a product. The customer is permitted to receive the refund as a result of paying a higher price (analogous to the average price paid for that customer) than they would have received at a competitor. It

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would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso in view of Ginsberg to have included *wherein a rebate is provided to the buyer* as taught by 892W in order to preserve an entire sale by rebating a few dollars, thereby improving the allegiance of a customer for future sales while still providing a profit maximizing practice (see at least: 892W, Paragraphs 13, 36).

10. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso and in view of Ginsberg in view of 892W, as applied to claims 1-2, 5-6, 8, 11, 13, and 15-17, and in further view of PTO 892 reference U (herein referred to as 892U).

Regarding claim 18, Irribarren in view of Eso in view of Ginsberg in view of 892W teaches all of the above as noted but do not expressly teach *wherein providing a rebate includes not charging product fees until the rebate amount owed is recovered*. 892U teaches *wherein providing a rebate includes no charging product fees until the rebate amount owed is recovered* (see at least: Paragraph 5). The Examiner notes that 892U teaches the use of instant rebates (i.e. rebates automatically given to the customer before being charged for the product). Thereby, by providing an instant rebate, product fees are not charge until the amount of that instant rebate have been deducted (i.e. recovered). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso in view of Ginsberg in view of 892W to have included *wherein providing a rebate includes no charging product fees until the rebate amount owed is recovered* as taught by 892U in order to increase customer acquisition and retention for Internet based businesses (see at least: 892UParagraph 5).

Regarding claim 19, Irribarren in view of Eso in view of Ginsberg in view of 892W teaches all of the above as noted but do not expressly teach *wherein providing a rebate includes not charging product fees until the rebate amount owed is recovered*. 892U teaches *wherein providing a rebate includes reducing a fee with a predetermined price floor established until the rebate amount owed is recouped* (see at least: Paragraph 5). The Examiner notes that 892U teaches the use of instant rebates (i.e. rebates automatically given to the customer before being charged for the product). Additionally, the minimum price being charged by the vendor (i.e. the price – rebated amount) constitutes a price floor. Thereby, by providing an instant rebate, the product fee is reduced instantly with the rebate amount being recouped instantly. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso in view of Ginsberg in view of 892W to have included *wherein providing a rebate includes no charging product fees until the rebate amount owed is recovered* as taught by 892U in order to increase customer acquisition and retention for Internet based businesses (see at least: 892UParagraph 5).

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso and in view of Ginsberg in view of 892W, as applied to claims 1-2, 5-6, 8, 11, 13, and 15-17, and in further view of PTO 892 reference V (herein referred to as 892V).

Regarding claim 20, Irribarren in view of Eso in view of Ginsberg in view of 892W teaches all of the above as noted but does not expressly teach *wherein providing a rebate includes crediting an online account*. 892V teaches *wherein providing a rebate includes crediting an online account* (see at least: Paragraph 1*, 3*). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso in view of Ginsberg in view of

892W in order to help consumers and businesses easily move cash over the internet via online accounts (see at least: 892V, Paragraph 5).

12. Claims 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren in view of Eso as applied to claims 1-2, 5-6, 8, 11, 13, 34-37, and in further view of Cao et al. (US 2003/0195832, herein referred to as Cao).

Regarding claims 38-39, Irribarren in view of Eso teaches all of the above as noted and further teaches *a population component that automatically populates the price curve for a product* (see at least: Eso: 0006, 0012, 0028-0032, Fig. 2A-2B, 5). Irribarren in view of Eso, however, does not expressly teach where *the price curve is populated with a previously submitted bid where the previously submitted bid was a winning bid*. Cao teaches where *the price curve is populated with a previously submitted bid where the previously submitted bid was a winning bid* (see at least: abstract, 0009, 0013, 0018, 0021, 0024, Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Irribarren in view of Eso to have included where *the price curve is populated with a previously submitted bid where the previously submitted bid was a winning bid* as taught by Cao in order to provide a user with a winning probability estimation using historical bid data (see at least: Cao: 0007-0009).

(10) Response to Argument

Applicants arguments filed in the Appeal Brief filed 7/2/2007 have been fully considered but are not persuasive. On pages 6-13 of the brief, Applicant contests that Irribarren and Eso are non-analogous art , that there is no reasonable expectation of success, and that the combination would result in an inoperable combination. Applicant also asserts, in view of those remarks, that the Examiner has thus not substantiated a prima facie case of obviousness. It is hereby asserted that both Irribarren and Eso are pertinent to the claimed invention and the combination of the references is proper. The Examiner notes that both Irribarren and Eso directly pertain to the field of ecommerce and particularly the field of electronic auctions. Additionally, not only do both Eso and Irribarren pertain directly to electronic auction systems, both pertain specifically to satisfying the demand needs of auction participants (see at least: Irribarren, abs, 0002, 0011; Eso, 0003-0004, 0007), with Irribarren directed to auctions for unmet demand and Eso directed to improved bid evaluations of auctions pertaining to buyer demand. Lastly, Irribarren further states "while embodiments of the invention will be described with reference to the open market system described above and later herein, it is understood that the invention is applicable to any bidding and/or auction type market system" (see at least: 0054). Thus, it is hereby asserted by the Examiner that, not only are the references found in the same field of endeavor, but they also solve a similar problem.

In addition to the motivation cited in the prior action by the Examiner, it is also noted that the combination of such features as found in Irribarren and Eso is no more

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than the predictable use of prior art elements according to their established function. In other words, the references unite old elements with no change in their respective function and yield predictable results. Thereby, the claimed subject matter is obvious under KSR [See *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396].

Furthermore, in response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Regarding claims 4, 7, 9-10, 12, 14-20, 38-39, and 42, it is again noted that no longer is the sole test of obviousness a test of teaching-suggestion-motivation [See *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396].

Regarding applicant's arguments concerning claim 12, the Examiner again notes that Lee states "the submitted RFQ is posted on the e-marketplace for a time period specified by the buyer" (see at least: 0012). In other words, the RFQ is available for a time period specified by the buyer and any bids must be received during that time period of availability.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

William J. Allen, Patent Examiner

 *William J. Allen*

Conferees:


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